



December 28, 1999

Mr. Paul F. Wieneskie
Cribbs & McFarland
1000 West Abram
P. O. Box 13060
Arlington, Texas 76094-0060

OR99-3785

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130634.

The City of Euless (the "city") received a request for information regarding an incident which occurred at 201 Denton Drive in Euless, Texas on Thanksgiving Day and the identification of all of the officers involved. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) states that:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may

demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. You provided this office a copy of the letter received by the city which you claim complies with the Texas Torts Claims Act and the city's charter and ordinances requiring notice of claim prior to instituting suit. We, therefore, conclude that litigation is reasonably anticipated and that the submitted information is related to the litigation for the purposes of section 552.103.

Although, the city has met its burden under section 552.103, we note that the information requested is in the form of an offense report. Normally information found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976); see Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 597 (1991) this office held that basic information in an offense report generally may not be withheld under section 552.103. We therefore conclude that, except for front page offense report information, the requested records may be withheld from required public disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

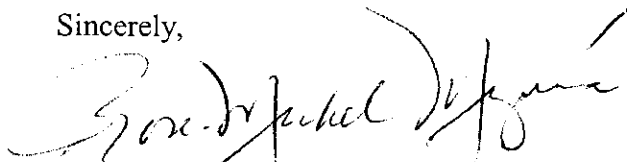
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 130634

Encl. Submitted documents

cc: Mr. Barry Shipman
517 Limestone
Euless, Texas 76038
(w/o enclosures)